

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ROBERT S. SIMMONS,

Plaintiff-Petitioner,

vs.

WARDEN, LONDON CORRECTIONAL
INSTITUTION,

Defendant-Respondent.

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Case No. 3:07cv329

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING INITIAL (DOC. #2),
SUPPLEMENTAL (DOC. #4) AND SECOND SUPPLEMENTAL
(DOC. #6) REPORTS AND RECOMMENDATIONS OF UNITED STATES
MAGISTRATE JUDGE; PETITIONER'S OBJECTIONS TO SAID
JUDICIAL FILINGS (DOC. ##3, 7 AND 8) OVERRULED; PETITIONER'S
REQUEST TO SUPPLEMENT THE RECORD (DOC. #5) SUSTAINED;
SUPPLEMENTED RECORD CONSIDERED; JUDGMENT TO ENTER IN
FAVOR OF DEFENDANT-RESPONDENT AND AGAINST
PLAINTIFF-PETITIONER, DISMISSING PLAINTIFF-PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS, WITH PREJUDICE, AS
BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS;
CERTIFICATE OF APPEALABILITY AND ANTICIPATED REQUEST TO
APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge in his Initial (Doc. #2), Supplemental (Doc. #4) and Second Supplemental (Doc. #6) Reports and Recommendations, as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Reports

and Recommendations are adopted in their entirety. The Plaintiff-Petitioner's Objections to said judicial filings (Docs. #3, #7 and #8) are overruled; Plaintiff-Petitioner's request to supplement the record (Doc. #5) is sustained, and the supplemented record has been considered in arriving at the decision rendered herein.

Judgment will, accordingly, be entered in favor of the Defendant-Respondent and against Plaintiff-Petitioner, dismissing the Petition for Writ of Habeas Corpus, with prejudice, as barred by the applicable statute of limitations. Because this Court's decision would not be debatable among jurists of reason, this Court denies the Plaintiff-Petitioner a Certificate of Appealability. Further, because any appeal from this Court's decision would be objectively frivolous, this Court denies Plaintiff the right to appeal *in forma pauperis*.¹

¹This Court stresses that any appeal would be objectively frivolous, not subjectively so, the latter conclusion being impossible to make, given the Plaintiff-Petitioner's sincerity in which his filings have been drafted and due to his obvious (and, in this Court's opinion quite understandable) frustration with the labyrinthine world of habeas corpus litigation.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

January 31, 2008

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Robert S. Simmons, Pro Se

Chief Magistrate Judge Michael R. Merz